IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19627 of 2007

For Approval and Signature:

HONOURABLE MR.JUSTICE D.A.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SHAIKH MOHAMMED ASHFAQ GULAM MUSTUFA - Petitioner(s)
Versus
THE STATE OF GUJARAT & 2 - Respondent(s)

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Appearance :
MR JD AJMERA for Petitioner(s) : 1,
SHRI MIHIR H.JOSHI, ADDL. ADVOCATE GENERAL with MR.SHIVANG SHUKLA AGP for Respondent(s) : 1 & 2
NOTICE SERVED BY DS for Respondent(s) : 1 - 3.

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CORAM : HONOURABLE MR.JUSTICE D.A.MEHTA

Date : 18/09/2007

ORAL JUDGMENT

1. Rule. The learned advocate for the respondents is directed to waive service. Considering the exigency of the matter, the petition has been heard finally with the consent of the parties.

2. The petitioner has challenged the action of the respondent-Authority in denying the admission to the PTC Course in Urdu medium by an oral order. The facts which are not disputed show that the petitioner-student studied through Urdu medium in standards I to VII, while the petitioner studied in Gujarati medium in so far as standards VIII, IX and X are concerned with one of the subjects in Standard X being Urdu language (Higher Level). At the standard X examination conducted by the Secondary Board, the petitioner obtained 53.2% marks overall, while 56% marks were obtained in Urdu language (Higher Level). Thereafter, the petitioner studied through Urdu medium in Standards XI and XII. Originally, the

petitioner obtained 68.86% of marks at the Standard XIIth examination. The petitioner got the result cancelled and appeared once again at Standard XIIth Examination in March, 2007 when he obtained 75.43% marks. The petitioner, thereafter, applied for admission in the only Urdu medium PTC College situated at Ahmedabad. On 10.07.2007, the petitioner was issued call letter inviting the petitioner for personal interview on 1st August, 2007. The call letter reflected that the name of the petitioner was listed at serial No.4 in the merit list in the open category in so far as Urdu medium is concerned. According to the petitioner on 1st August, 2007 when the petitioner appeared for interview his form was scrutinized and the petitioner was informed orally that the petitioner is not eligible for being admitted in Urdu medium PTC College as the petitioner has obtained only 56% marks in Urdu language at the S.S.C. Examination. It is at this stage that the petition had been filed.

3. The learned advocate for the petitioner has assailed the action of the respondent-Authorities by

inviting attention to the Rules relating to admission for 2007-08, more particularly Rule 4.6.2 which deals with admission in Urdu medium course. According to the learned advocate, the Rule itself states that this Rule had been framed in light of the observations made by this High Court in Special Civil Application No.6660 of 1999, but the Authorities have incorrectly interpreted the order or directions of this Court to incorporate the requirement of having obtained at-least 60% in the Urdu language (Higher Level) examinations both at the S.S.C. and the H.S.C. Examinations. For this purpose, the learned advocate has invited attention to paragraph No.6 of the order dated 04.10.1999 made by this Court in the case of *Bedi Jamil Ahmed Isha V/s. State of Gujarat* in Special Civil Application No.6660 of 1999 to emphasize the fact that the only requirement that the Court had indicated was proficiency in the language in which medium the student was seeking admission and hence, the Rule has to be read in that context. It was further submitted that any further requirement prescribed in the Rule was required to be struck down especially in light of the fact that no such

requirement has been prescribed for seeking admission to the PTC course in any other medium like Marathi, Sindhi, Hindi or English.

4. After issuance of Notice, the respondent has appeared and tendered affidavit-in-reply dated 16th August, 2007. The following averments have been made in the said affidavit.

> *"7. Thereafter on the basis of the decision referred by this Hon'ble Court in Special Civil Application No.6660 of 1999 a policy came to be evolved by the State Government vide a resolution dated 28.04.2000. It is inter-alia, provided in the said resolution dated 28.04.2000. It is inter-alia, provided in the said resolution that for the purpose of admission in P.T.C. Course (Urdu Medium) a student who has persecuted his studies in Urdu Medium in 7th Standard shall have to pass S.S.C. Examination and H.S.C. Examination with Urdu (Higher Level) as one of the subjects with minimum 60 marks.*
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> *8. In view of the said resolution rules came to be framed for the purpose of admission in P.T.C. Course. Rule 4.6.2*

inter-alia deals with the admission in P.T.C. Course (Urdu Medium). The said rule clearly provides that a student who has prosecuted his studies in Urdu Medium upto standard 7th, then the student is required to have secured minimum 60 marks in Urdu Subject in Standard 10 and 12.

9. In view of provisions enshrined in the said rules, inter-alia, dealing with the admission in P.T.C. Course, minimum 60 marks in Urdu Subject in mandatory for the purpose of securing admission in P.T.C. (Urdu Medium). In the instance case the petitioner has studied, in (Urdu Medium) upto standard 7th, thereafter the petitioner prosecuted his further studies in Gujarati Medium with Urdu Higher level language as one of the subjects. The petitioner has secured percent in the said subject in S.S.C. Examination. Thereafter the petitioner prosecuted his studies in higher secondary through Urdu Medium. In view of this facts the case of the petitioner is required to be decided in view of the provisions enshrined in the rules, more particularly rule 4.6.2. If the case of the petitioner is tested at the touch stone of the provisions enshrined in rule 4.6.2 it would become abundantly clear that since

the petitioner could not secure requisite number of marks in Urdu Higher Level Language in S.S.C. Examination, the petitioner is not entitled to claim admission in P.T.C. (Urdu Medium).

10. It would be out of place to mention at this juncture that the purpose of taking a policy decision of aforesaid nature is that the students who could not prosecute their studies in Urdu Medium from Standard 1 to 12 on account of paucity of sufficient number of students who have studied through out in Urdu Medium, a student can have a chance to secure admission in P.T.C. on the basis of his performance in S.S.C. and H.S.C. Examination. Even if a recourse is made to the interim order passed by this Hon'ble Court in Special Civil Application No.6660 of 1999 which would become abundantly clear that considering the facts and circumstances of the case this Hon'ble Court was pleased to impart a mandatory interim direction to consider the students who are studied in Urdu Medium school upto 7th Standard and who have studies in Secondary / Higher Secondary Schools examination with Urdu Higher Level as one of the subjects as eligible for admission

> *for P.T.C. Course in Urdu Medium. However while imparting the said direction this Hon'ble Court was pleased to clarify that in future the authority shall be at liberty as prescribed Higher eligibility criteria for students who have studied upto standard 7th in Urdu Medium and have pass S.S.C. / H.S.C. Examination with Urdu Level as one of the subjects. As mentioned herein above in view of the said liberty reserved by this Hon'ble Court in aforesaid order dated 04.10.1999 the authority have prescribed a criteria of minimum 60 percent of marks in S.S.C. and H.S.C. examinations in cases where students has prosecuted his studies in Urdu Medium upto Standard 7th".*

The aforesaid submissions have been made after stating that the order dated 04.10.1999 was an interim order and the petition had been disposed of vide judgment and order dated 17.01.2006.

5. In paragraph No.12 of the said Affidavit, the following averments have been made:

> *"12. It would be pertinent to mentioned at this juncture that the petitioner was issued a call letter on the basis of his application for the admission in P.T.C.*

Course. At the time of issuing call letter to the petitioner the respondent authority does not have adequate material so as to scrutinize the form in Toto. At the relevant point of time the authority merely undertakes an exercise of verification of form submitted by a candidate. On the day on which a student appears before the respondent committee, the respondent committee scrutinizes the relevant documents produced by the candidate and upon scrutiny and verification of the same a candidate is informed about the outcome of his application. In the instance case the petitioner was called upon to remain present before the respondent committee with original mark sheet and relevant certificates. The petitioner accordingly appeared before the committee in person, and produce his mark sheet and relevant certificates. Upon scrutiny of the mark sheet it was revealed to the authority that the petitioner had not prosecuted his studies throughout in Urdu Medium. In view of these facts and keeping in mind the provisions enshrined in the rules governing the field, the petitioner was denied admission in P.T.C. Course. The said decision is just and proper and does not warrant interference at the hands of his Hon'ble Court".

6. On going through the aforesaid averments as it was found by the Court that the averments to the effect that the call letter for interview was issued to the petitioner without scrutinizing the application form in toto appeared to be *prima-facie* unacceptable the Court called upon respondent-authority to tender affidavit describing the correct procedure adopted by the respondent-authorities for granting admission. Accordingly, Additional Affidavit dated 3rd September, 2007 came to be tendered wherein it was stated that the Authority was preparing two separate lists by dividing the Male students and Female students in two separate groups. The reason for such an exercise was, as orally submitted, that there were separate colleges for Male students and Female students. However, during the course of hearing it was noticed that apart from the individual colleges there was one co-educational college having both Male and Female students. Therefore, the Authority was asked to explain under which Rule or provision was the Authority undertaking such an exercise, because *prima-facie* the Rules did not permit such a bifurcation. The answer was that it was

a long standing practice and no complaint had been made by anybody.

7. At this stage, the Court found it necessary to elicit a proper reply from the respondent-Authorities and hence, the learned Additional Advocate General was requested by the Court to get involved in the matter and render assistance to the Court. The learned Additional Advocate General after taking instructions in the matter has asked the Authorities to submit a further Additional Affidavit dated 14th September, 2007 whereunder the following averments have been made.

> *"3. The first issue is regarding the procedure adopted by the authorities prior to preparation of the final merit list on the basis of which call letters are issued to students.*
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> *3.1 I state that after the declaration of the HSC results, a public announcement is made in the newspapers for admission of students to the PTC course conducted by various colleges in the State. For the current academic year the authorities have set up 92 centres throughout Gujarat where*

the application forms can be received from the students. These centres have been divided into four zones namely North Gujarat, Central Gujarat, South Gujarat and Saurashtra Zones, Each zone is headed by a Class II officer of the Government. The staff for manning the centres are selected and a short training of one day is imparted to them regarding collection and verification of the forms received.

3.2 About 61,000 forms were received for admission to the PTC course this year. On receipt of the form verification/scrutiny was carried out by the clerical staff at the centre principally covering the ten issues specifically stated on the first page of the form. A copy of the form of the petitioner indicating the verification/scrutiny carried out is annexed herewith and marked as Annexure-I further state that the students have also to submit a special form, if required, regarding admission to a college imparting education in a particular medium and a copy of Form submitted by the petitioner in this regarding is at Annexure-II hereto.

3.3 After such scrutiny/verification, the forms are collected in two stages, namely zonewise and thereafter at the central collection centre at Ahmedabad. The forms are computer scanned as a part of the special software developed for the purpose, which automatically sorts the forms and ranks the applicants in order of merit. At the first stage an ad-hoc merit list is generated and thereafter published in centres at every District, that is, at 25 centres and this ad-hoc list is open for objections for a period of three days. After the said period and consideration of objections, if any received, the final list is prepared and call letters are issued to the students. The students have to come for admission along with the original documents which are verified and such verification is endorsed on PTC Form No.04, copy of which is at Annexure-III hereto. The entire admission process even thereafter including selection and allocation of colleges and issuance of admission letter is computerized.

3.4 I state that therefore there is adequate scrutiny/ verification of the forms prior to preparation of the merit list. I state that the giving of a rank of

the petitioner in the merit list is an inadvertent mistake since the petitioner was clearly ineligible, as evidence from the Form F appended to this application form which has been annexed with the affidavit. I state that the petitioner had received a copy of the relevant rules along with the application form itself and was quite well aware that on the requirement stipulated for admission to Urdu medium PTC for the current academic year, he was ineligible for admission and therefore cannot claim equity or premium on account of an inadvertent mistake of the authorities.

4. The second issue is regarding the prescription of obtaining 60% marks in Urdu (Higher Level) in the Standard X and Standard XII examinations conducted by the Board.

4.1 I state that as set out in my earlier affidavit the relevant rules regarding admission to Urdu medium PTC colleges have been framed pursuant to the directions issued and liberty reserved by this Hon'ble Court vide its interim order dated 4.10.1999 in SCA No.6660 of 1999 which granted liberty for prescribing

higher eligibility criteria for students who have studied upto Standard VII in Urdu medium. The said rule is in existence since the year 2000 and even this year, the applications for admission have been considered the basis of such rules which inter-alia prescribe a requirement of obtaining 60% marks in Urdu (Higher Level) at the Standard X and Standard XII examinations conducted by the Board. I state that these rules have not been challenged by the petitioner in the present writ petition.

4.2 I however state that on a reconsideration of the relevant rules pursuant to the arguments/ discussion during the course of hearing of the present writ petition, the respondent No.2 shall propose forthwith an amendment to Rule 4.6.2 of the relevant Admission Rules so as to reduce by a minimum of 10% or do away with the requirement of minimum marks and restrict the eligibility to the student having passed Urdu (HL) in the Standard X and Standard XII examinations conducted by the Board. However, this may kindly not be considered to be an admission of any invalidity in the present Rules.

5. The third issue is regarding preparation of a single merit list of the general category for boys and girls.

5.1 I state that this issue is not relevant and does not arise in the present proceeding at all and would not affect the claim of the petitioner in any manner. I however state that in light of the arguments/ discussion during the hearing of this petition, prompt steps will be taken by the respondent No.2 for the next academic year to ensure that the preparation of the merit list for the genral category is in accordance with the Admission Rules, either by issuing necessary guidelines/ direction in this behalf for complying with the relevant Rules without disturbing the allocation of seats in PTC colleges, or by proposing an amendment to the Rules if required.

6. I state that on the merits of the matter, I reiterate that the petitioner is ineligible for admission as per the Admission Rules in force which have not been challenged in the petition and the admission process has been completed the admissions have been granted on all the seats in the College. The petitioner cannot

claim equity or premium on the rank granted to him in the merit list by the authorities which was due to inadvertence and error, particularly when the petitioner was quite well aware that he was ineligible for admission to the PTC course as stated above."

8. Rule 4.6.2 which relates to admission in Urdu medium is part of Rule 4 which prescribes eligibility for admission. Under Rule 4.1 a prescription is made as to which are the examinations which are required to be cleared for becoming eligible to seek admission in the PTC Course. Rule 4.1.1 stipulates that a candidate must have cleared the examinations conducted by the Gujarat Secondary and Higher Secondary Education Board of Standard 12 either in the Science stream or the General Stream or the two other prescribed examinations. Under Rule 4.2 the minimum marks required are at-least 45%. Under Rule 4.6.1 the medium of admission is provided for and it is laid down that a candidate has to clear both S.S.C. and H.S.C. Examinations in the same medium for becoming eligible to be admitted in the said medium in PTC course. Thereafter, Rule 4.6.2

which deals with Urdu medium provides for candidates who have not studied in Urdu medium upto XIIth Standard ought to have studied upto standard VIIth in Urdu medium as laid down by the High Court in Special Civil Application No.6670 of 1999. Furthermore, such a candidate must have obtained at-least 60% marks in Urdu language Higher Level at the examinations of standard X and standard XII. It is this Rule which is required to be interpreted for the purposes of the present.

9. Incidentally, Rule Nos. 8 and 9 also have bearing on the issue. Under Rule 8 the requirement of merit marks and corrections therein have been provided for but the opening portion of Rule 8.1 makes it clear that it is the marks obtained at Standard XII examinations which are relevant. Rule 9 deals with preparation of merit list and under Rule 9.1 it is provided that a merit list in the descending order of all candidates who are otherwise eligible and who have obtained marks as per Rule 8 are to be included in the merit list. The same Rule, namely, Rule 9, further provides that the merit list

of candidates falling in reserved categories has to be prepared in accordance with their order of merit.

10. Therefore, on a conjoint reading of all the Rules it becomes clear that for a candidate to be eligible to secure admission in PTC Course the basic requirement is of having passed at the H.S.C. Examination conducted by the Gujarat State Secondary and Higher Secondary Education Board. The merit list is required to be prepared on the basis of marks obtained at the Standard XII i.e. H.S.C. Examination only. For obtaining admission in a particular medium the candidate has to clear the S.S.C. and H.S.C. Examinations in the said medium, namely, in the medium of instruction in which the candidate is seeking admission.

11. Thereafter, when one reads Rule 4.6.2 along with Rules 4.6.3, pertaining to Marathi medium Science stream, Rule 4.6.4 relatable to Sindhi Medium, Rule 4.6.5 relatable to Hindi medium, Rule

4.6.6 relatable to English medium, it is apparent that the only requirement is of having passed at the examinations of standard X and XII in each of the respective mediums, the only departure being in case of Marathi medium where an exception is made in absence of any Higher Secondary School running Science Stream Course in the State of Gujarat. However, when it comes to the Rule relating to admission in Urdu medium, as already noticed hereinbefore, various prescriptions have been made which are neither germane to the requirement for the purposes of obtaining admission in Urdu medium in PTC Course, nor is the said Rule rational when it prescribes minimum standard of 60% marks both at the S.S.C. and H.S.C. examinations in Urdu language (Higher Level). If the Rule had been formulated on its own possibly the Court would not have interfered. However, the Rule itself records that the said Rule has been framed pursuant to the order of this Court in Special Civil Application No.6660 of 1999 and hence, it has become necessary to examine as to what was the direction made by this Court. In paragraph No.6 of the order dated 04.10.1999 in the case of

Bedi Jamil Ahmed Isha (supra) this Court has stated as under:

> *"6. As far as the current academic year is concerned, the Respondents shall grant admissions in accordance with the directions contained in this order,* ***but it is clarified that, in future the Respondents shall be at liberty to prescribe higher eligibility criterion for the students who have studied upto Standard VII in Urdu medium and have passed the Secondary School Certificate/ Higher Secondary School Examination with Urdu Higher Level as one of the subjects, and who have not studied the other subjects in Urdu medium, for instance by prescribing that such students shall have to obtain the stipulated number of marks in Urdu higher level to be eligible for admission to the PTC course in Urdu medium".*** Emphasis supplied.

12. Thus, the Court has only clarified that in future the respondents shall be at liberty to prescribe higher eligibility criteria for the students who have studied upto VIIth Standard in Urdu medium etc., but the Court has nowhere issued any

directions to frame the Rule in a particular manner so as to be contrary to Rules relatable to admission in other mediums, nor has the Court directed framing of Rule which, on the face of it, operates so as to create discrimination between students who are otherwise similarly situated, namely, students who are eligible to be admitted to PTC course after having cleared the H.S.C. Examination, students who have cleared the S.S.C. and the H.S.C. Examination in the same medium of instruction in which medium of instruction the students are seeking admission, and being entitled to figure in the merit list on the basis of marks obtained at the H.S.C. Examination only. Hence, additional prescription in Rule 4.6.2 that the student seeking admission in Urdu medium has to obtain at-least 60% marks at the standard X and standard XII examinations creates discrimination in its implementation.

13. Thus, to the extent Rule 4.6.2 prescribes the additional requirement when read in juxta position with Rules 4.6.3, 4.6.4, 4.6.5 and 4.6.6, is required to be read down considering the basic

eligibility criteria prescribed by Rule 4.1 as well as requirement of 4.6.1 and the basis for preparation of merit list. Thus considering from any view point such a prescription in the Rules cannot be permitted to stand and is required to be read down so as to ensure that Rule 4.6.2 only provides that a candidate seeking admission in Urdu medium has cleared the examination in standards X and standard XII in Urdu medium.

14. On facts the respondent-Authority has accepted that the case of the petitioner was not processed properly. That as per Rule 4.6.2 the petitioner was not entitled to be called for interview because Form-F which was filed alongwith the application form specifically gives details as to the medium of instruction in different standards and the percentage of marks obtained at the standard Xth and XIIth examinations. It is also accepted fact that if only the marks of standard XII are taken into consideration, the petitioner figures at serial number 4 in the merit list which is prepared as per procedure adopted by the Authorities, i.e.

considering the separate list for Male students. At the same time, when a common merit list is prepared as directed by this Court the name of the petitioner appears at serial number 38 and hence, the petitioner is not eligible to seek admission as there are only 37 seats available, out of which 19 have been alloted to Male students, 15 have been allotted to Female students and 3 have been alloted to students belonging to Science Stream as per Rule 6.2 which provides for reservation of 30% of seats for Science Stream students. It is also necessary to record that out of 19 Male students, the student appearing at serial number 19 belongs to Handicapped category.

15. Thus even as per the various Affidavits filed by the respondent-Authority it has become apparent that the procedure adopted by respondent-Authority is defective and is not in consonance with the Rules. The preparation of final merit list, even if one goes by the statement made in the last Affidavit dated 14th September, 2007, makes it clear that the preparation of two merit lists for Male and Female is not warranted by the Rules and cannot be

permitted. At the same time, even if that was taken as the basis, the so called computer scanning and preparation of merit list for the present year is concerned, even as per the stand of the respondent-Authority, on implementation of Rule 4.6.2 as read by the Authority the name of the petitioner could not have figured at serial number 4 in the merit list, and thus it is apparent that the Authorities have been adopting a procedure which is contrary to the Rules framed by the Authority. The Rules are applicable not only to the applicant-students but are also applicable to the Authority and the Authority is bound to ensure that the Rules are properly implemented because the Rules relate to admission procedure and the Authority cannot be permitted to depart from the Rules on the specious plea of administrative exigencies. The Authority is directed to ensure that henceforth the procedure adopted by the Authority is in consonance with the requirement of the Rules regardless of the administrative difficulty which the Authority may percive to be a difficulty.

16. In so far as the prescription in Rule 4.6.2 of obtaining 60% marks in Urdu language Higher Level at the standard X and standard XII examinations is concerned, the Authority is already prepared to suitably amend the said Rule and hence, for the present, no further directions are necessary except for reading down the Rule as already stated hereinbefore till the point of time the Rule is suitably amended.

17. The only question that survives is whether the petitioner is entitled to any relief at this stage after the Rule is read down. Even if the Rule is read down by bringing it in consonance with other Rules relatable to different mediums of instruction the requirement of the petitioner having cleared standard X and standard XII examination in the medium of instruction in which the petitioner is seeking admission, namely, Urdu medium cannot be waived or given a go bye. The petitioner has admittedly not cleared standard X examination in Urdu medium but has merely studied in Urdu language (Higher Level) at the standard X examination and cleared the same.

Therefore, even if only Rule 4.6.1 is read omitting all other requirements the petitioner does not fulfill the basic criteria of clearing S.S.C. and H.S.C. Examinations in the medium of instruction in which the petitioner is seeking admission i.e. Urdu medium. Therefore, the petitioner cannot be granted any relief even after the relevant Rule has been read down because the case of the petitioner has to be put at par with all other students who have cleared Standard XII examination and are seeking admission in other mediums of instruction, wherein the only basic requirement is of having cleared the standard X and XII examinations in the medium of instruction in which a particular student is seeking admission.

18. Thus, the petition is partly allowed. Rule made absolute to the aforesaid extent. There shall be no order as to costs.

(D.A.MEHTA, J.)

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